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November 2, 2022

**BY ECF**

Honorable Philip M. Halpern  
United States District Judge  
Southern District of New York  
300 Quarropas Street  
White Plains, NY 10601-4150

Re: Constant v. Dapcevic, 16 Civ. 3985 (PMH)

Dear Judge Halpern:

This Office represents defendants Dapcevic, Alban, and Sturtevent (collectively, "Defendants") in the above-referenced action. We write to respectfully propose a special interrogatory to be presented to the jury in the event that a verdict is rendered in Plaintiff's favor on the excessive force claim against Defendant Dapcevic for the purpose of determining qualified immunity. We propose the following special interrogatory be presented to the jury if a verdict is returned in Plaintiff's favor:

Do you find that Defendant Dapcevic struck Plaintiff's head with a baton?

Yes \_\_\_\_\_

No \_\_\_\_\_

This interrogatory should be annexed to the verdict sheet in an envelope and the following language should be added at the end of Part II.4 - "If and only if you find that Defendant Nedzad Dapcevic used excessive force against Plaintiff in violation of his constitutional rights please answer the question presented in the annexed envelope."

As recognized by the Second Circuit in *Cowan v. Breen*, 352 F.3d 756, 764 (2d Cir. 2003), "the qualified immunity issue is a 'question of law better left for the court to decide'" A jury however, is to determine the facts applicable to the qualified immunity defense. Defendants contend that if the jury were to find that Defendant Dapcevic struck Plaintiff on his shoulder, Defendant Dapcevic would be entitled to qualified immunity. Thus, Defendants contend that the

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answer to this factual question will allow the Court to decide if Defendant Dapcevic's actions were objectively reasonable. *See also Scism v. Ferris*, No. 21 -2622 CV, 2022 WL 289314, at \*2(2d Cir. Feb 1, 2022)(noting that if the jury finds that the defendant used excessive force, the court should then decide whether the defendant is entitled to qualified immunity aided by interrogatories that present the key factual disputes to the jury).

We thank the Court for its attention in this matter.

Respectfully submitted,

/s/ Amanda Yoon

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cc: All counsel (by ecf)